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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No.92-264
	)	
Horizontal and Vertical Ownership Limits, Crossownership Limitations and Anti-trafficking Provisions	)	

COMMENTS OF GTE

GTE Service Corporation ("GTE"), on behalf of the GTE Domestic Telephone Operating Companies and GTE Laboratories Incorporated, hereby responds to the Notice of Proposed Rule Making and Notice of Inquiry ("Notice") in the above-captioned proceeding, FCC 92-542, released December 28, 1992.

Among GTE's interests in this proceeding are (1) the extent to which vertical integration and horizontal concentration in the cable television industry affect the ability of GTE's local telephone companies to compete (a) as providers of facilities for alternative multichannel video programming distributors, and (b) as multichannel video programming distributors, directly or through affiliates, where lawful; and (2) the effects of disparities in crossownership restrictions on the two industries on the 1992 Cable Act's twin goals of competition and diversity in distribution of video information.

MMDS Crossownership. At ¶26 of the Notice, the Commission suggests that cable/MMDS crossownership restrictions recently adopted in aid of "wireless cable:"

> are consistent with and effectively implement the cross-ownership prohibitions of the 1992 Cable Act as regards the MMDS service.

It appears, however, that the cable/MMDS ownership restriction in Section 21.912(c) of the Rules does not apply, pursuant to subsection (a) of the same section, if the cable operator is not the sole provider of cable service in the operator's franchise area.

No such exception appears in the statute for competitive cable service franchises. New Section 613(a)(2), 47 U.S.C.§533(a)(2), flatly makes it unlawful for a cable operator to hold an MMDS license "in any portion of the franchise area served by that cable operator's cable system." Accordingly, the Commission should amend 47 C.F.R.§21.912 to comport with the 1992 Act.

Subscriber Limits. GTE believes that "total franchise-area homes" would better express the horizontal reach of a multi-system cable operator than either "subscribers" or "homes passed." As was demonstrated by recent submissions in the so-called "video dialtone" proceeding, substantial portions of existing cable franchises are not built out so as to pass all the homes the operator is authorized to serve.[1]

As the Notice observes, Congress has given the FCC discretion to choose the measure of horizontal concentration. The policy aim shared by Congress and the Commission, that "cable operators continue to expand, where economically justified, their capacity,"[2] would be well served by encouraging MSOs to grow through completing their locally authorized construction.

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[1] *See, e.g.*, Comments of TIA and USTA, both dated October 13, 1992, in Second Further Notice of Proposed Rule Making, CC Docket 87-266.

[2] 1992 Act, Section 2(b)(3).

Attribution Standards. Congress has left to the Commission the important task of establishing permissible degrees of ownership and control between cable systems and between cable operators and affiliated users. (Notice, ¶¶38, 46) GTE believes that the attribution standards used in the telephone-cable television crossownership rules, as modified in August of 1992,[3] need to be kept in mind here even though not directly affected by the cable re-regulation legislation.

In its Comments (56-57) in a related proceeding on access to programming, MM Docket 92-265, Viacom International described the typical cable system's dominance of the local video distribution market in terms akin to the "bottleneck" position critics frequently ascribe to telephone exchange carriers:

> Notwithstanding the entry of new technologies, cable operators still control access to the overwhelming number of subscribers and use the bargaining power this creates to obtain low license fees from program services.36
>
> 36 . . .[E]ven in instances in which there is competition, the local cable operator often is the only entity with the large subscriber base that the programmer must reach to ensure the viability of both advertiser-supported and premium services. Thus the programmer must sell its programming to the cable operator in order to be a viable entity.

In its Comments (16-19) in the same program access proceeding, NCTA sought to distinguish the purpose of limits on vertical relationships there from the purposes of other types of crossownership restrictions -- broadcast/broadcast and cable/telephone. Specifically, said NCTA:

> The level of cable operator ownership necessary to give a cable programmer such an incentive [to favor the operator] seems obviously greater than the level necessary to give rise to the concerns embodied in the broadcast and cable/telco cross-ownership rules. (18)

[3] *Second Report and Order*, CC Docket 87-266, 7 FCC Rcd 5781 (1992).

GTE submits, instead, that the bottleneck control ascribed to cable operators by one prominent cable-affiliated programmer, Viacom International, makes it far from obvious that cable is so different from telephone companies. To the contrary, the cable operator's incentive and ability to discriminate unfairly in programming distribution arrangements is quite clear.

For these reasons, the Commission's choice of ownership attribution standards here, in Docket 92-264, should proceed from the reality that the cable industry possesses power in local video distribution rivalling or exceeding that of exchange telephone companies in voice transmission. Accordingly, the ownership attribution standards applied to the two industries should be similar.

For example, if the Commission chooses a "control" standard[4] for cable here, it should consider selecting the same measure on reconsideration of the *Second Report and Order* in CC Docket 87-266, the video dialtone proceeding. (Note 3, *supra*)

CONCLUSION

For the reasons discussed above, GTE urges the Commission to (1) review the sufficiency of its cable/MMDS crossownership rule; (2) adopt total franchise homes as a horizontal concentration standard; and (3) move toward parity in the

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[4] In its Comments in the program access rule making, MM Docket 92-265 (18-19), NCTA argues that "actual voting control (50 percent ownership), or some evidence of working control" should be the attribution standard, just as GTE and other local exchange carriers have urged on reconsideration in the video dialtone docket. If that is correct for MSOs here, it is right for telephone companies there.

crossownership rules applicable to exchange telephone companies, on the one hand, and cable operators, on the other hand.

Respectfully submitted,

GTE SERVICE CORPORATION

By ______________________

Ward W. Wueste, Jr., HQE03J43
Marceil F. Morrell, HQE03J35
P.O. Box 152092
Irving, Texas 75015-2092
(214) 718-6362

James R. Hobson
Jeffrey O. Moreno
Donelan, Cleary, Wood & Maser, P.C.
1275 K Street N.W., Suite 850
Washington, D.C. 20005-4078
(202) 371-9500

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ITS ATTORNEYS